

EXHIBIT 11

1 THE CLERK: We are on the record with
2 indictment 70327-20, which covers indictment 636N-20, as
3 well as docket number CR 021052-22 NA, the People versus
4 Aaron Fischmann.

5 Appearances, please, for the record.

6 MR. VARGAS: David Vargas for the Office of
7 the New York State Attorney General.

8 MR. McLEAN: Also from the New York State
9 Attorney General, Hugh L. McLean.

10 MR. McNALLY: Edward McNally for the defendant
11 Aaron Fischmann, who's present in court.

12 MR. KOEVARY: Also for Mr. Fischmann, Daniel
13 Koevary, Kasowitz Benson Torres.

14 Good afternoon, your Honor.

15 THE COURT: Good afternoon.

16 MR. HUEBNER: Also for the defendant, Levi
17 Huebner, Levi Huebner & Associates, PC, for Aaron
18 Fischmann.

19 Good afternoon, your Honor.

20 THE COURT: Good afternoon.

21 Are you Aaron Fischmann?

22 THE DEFENDANT: I am.

23 THE CLERK: A new accusatory instrument has
24 been filed and we will arraign the defendant on it.

25 Mr. Fischmann, you have the right to the aid

1 of counsel in every stage of these proceedings.

2 You're entitled to communicate free of charge
3 in order to obtain a lawyer or inform a relative or
4 friend that you have been charged with an offense.

5 If you wish the aid of a lawyer, your case
6 will be adjourned in order for you to obtain a lawyer.
7 If you wish the aid of a lawyer and cannot afford one,
8 you will be screened by the Court.

9 An attorney is here today to assist you with
10 your arraignment and bail application. Those released
11 on bail are on their own recognizance or in the custody
12 of another. You are advised if you fail to appear when
13 the Court so directs, you may be subject to additional
14 charges and the case may proceed in your absence.

15 In the event you commit a crime while you are
16 out on bail or at liberty, the Court may revoke your
17 bail or liberty pending a hearing.

18 The New York State Office of the Attorney
19 General has filed a felony complaint against you for the
20 crimes of fraudulent practices in respect to stocks,
21 bonds and other securities, in violation of General
22 Business Law Section 352-c(5).

23 How do you plead; guilty or not guilty.

24 MR. McNALLY: The defendant pleads guilty.

25 THE COURT: Let's go off the record.

1 MR. McNALLY: The defendant pleads not guilty.

2 THE COURT: Let's not go off the record.

3 THE CLERK: Aaron Fischmann, I have been
4 instructed by the Honorable Fran Ricigliano, sitting as
5 a local criminal court judge, to advise you that you
6 have the right to a felony hearing on the charges
7 contained in this felony complaint.

8 Do you waive the right to that felony
9 examination and consent to this case being held for the
10 action of the grand jury?

11 THE DEFENDANT: Yes, I do.

12 THE COURT: Waiver is accepted.

13 THE CLERK: The New York State Office of the
14 Attorney General has filed a superior court information
15 against you. Under the Constitution of the State of
16 New York you have the right to be prosecuted by
17 indictment. Do you wish to waive that right and proceed
18 by superior court information?

19 THE DEFENDANT: Yes, I do.

20 THE CLERK: I will ask you to sign it.

21 Let the record reflect the waiver of
22 indictment has been signed by the defendant and counsel.

23 THE COURT: Sir, you've indicated you want to
24 proceed by way of a superior court information,
25 otherwise known as an SCI, rather than an indictment.

1 An SCI and an indictment are the same, in that each is a
2 written document which charges a person with a crime.
3 The difference between the two is that an indictment is
4 issued by a grand jury after the jury has received
5 testimony and other evidence establishing that a person
6 committed a crime, an SCI is issued by the district
7 attorney on the consent of a defendant.

8 Do you understand?

9 THE DEFENDANT: I do.

10 THE COURT: Have you spoken with your lawyer
11 about your case, about waiving your right to be
12 prosecuted by indictment and about consenting to be
13 prosecuted by an SCI?

14 THE DEFENDANT: I have.

15 THE COURT: Are you satisfied with the
16 services of your lawyer?

17 THE DEFENDANT: I am.

18 THE COURT: Upon waiving prosecution by
19 indictment and agreeing to be prosecuted by an SCI, you
20 will be permitted a plea agreement which I understand is
21 about to be placed on the record.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: I have before me a document
25 entitled "Waiver of Indictment." This waiver form in

1 essence specifies you have the right to consent to be
2 prosecuted by indictment, that you waive such right and
3 consent to be prosecuted by SCI, that the SCI will have
4 the same force and effect as an indictment, and that the
5 SCI will charge you with the crime of fraudulent
6 practice in respect to stocks, bonds and other
7 securities. That's a violation of Section 362-c(5) of
8 the General Business Law of the State of New York.

9 Do you understand?

10 THE DEFENDANT: I do.

11 THE COURT: Is that your signature on this
12 waiver of indictment form?

13 THE DEFENDANT: It is.

14 THE COURT: Have you gone through it with your
15 attorney?

16 THE DEFENDANT: Yes, I have.

17 THE COURT: Let the record show the defendant
18 has signed the waiver of indictment form here in open
19 court.

20 Mr. McNally, have you witnessed that
21 signature?

22 MR. McNALLY: Yes, I did.

23 THE COURT: Other than the plea agreement has
24 anyone made any other promise, commitment or
25 representation of any kind to get you to consent to

1 prosecution by SCI?

2 THE DEFENDANT: No.

3 THE COURT: Has anyone threatened or forced
4 you to consent against your will?

5 THE DEFENDANT: No.

6 THE COURT: Have I, a lawyer or anyone else
7 said anything to you to have you consent against your
8 will?

9 THE DEFENDANT: No.

10 THE COURT: Are you consenting, therefore,
11 voluntarily, of your own free will and choice?

12 THE DEFENDANT: I am.

13 THE COURT: The Court being satisfied that the
14 waiver complies with the law and that the defendant's
15 waiver is knowing, intelligent and voluntary, the Court
16 approves the waiver and signs the order accordingly.

17 THE CLERK: Aaron Fischmann, the
18 New York State Office of the Attorney General has filed
19 superior court information 1569N-22 for the crime of
20 fraudulent practice in respect to stocks, bonds and
21 other securities in violation of General Business Law
22 Section 352-c(5).

23 You're advised of your right to counsel
24 throughout all stages of these proceedings and you're
25 also advised that if you have any prior felony

1 convictions, you may be subject to a mandatory term of
2 imprisonment.

3 How do you plead; guilty or not guilty?

4 THE DEFENDANT: I plead guilty -- not guilty.

5 THE CLERK: Do the People have an application?

6 MR. VARGAS: Your Honor, at this --

7 THE COURT: One second. Off the record.

8 (Discussion held off the record.)

9 THE COURT: Let's go back on the record.

10 MR. McNALLY: Your Honor, we would now like to
11 make a motion pursuant to CPL Section 200.20 to
12 consolidate the superior court information number
13 SCI 1569N of '22 with indictment 636 of 2020.

14 THE COURT: Any objection to that?

15 MR. VARGAS: No, your Honor.

16 THE COURT: Okay. The motion is granted and
17 the SCI is consolidated and made count 21.

18 People, do you have any applications?

19 MR. VARGAS: Yes, your Honor.

20 The People and the defense have come to an
21 agreement which we request the Court to accept, which
22 includes the defendant pleading guilty to the crimes of
23 grand larceny in the third degree, a class D felony --

24 THE COURT: I'm sorry to interrupt Mr. Vargas.
25 I apologize.

1 Before we move forward, as I indicated to
2 counsel, my chambers received a call from Mr. Gordon,
3 who had indicated that -- he asked the Court if it had
4 received a victim impact statement. Is Mr. Gordon a
5 victim in this case?

6 MR. VARGAS: Mr. Gordon is not a victim in
7 this case.

8 THE COURT: Do the People have any impact
9 statements that they wish to furnish at this time?

10 MR. VARGAS: We do not.

11 THE COURT: Just to be clear, Mr. Gordon is
12 not one of the complainants in this criminal action?

13 MR. VARGAS: Mr. Gordon is not a complainant
14 in this criminal matter.

15 THE COURT: Okay. Please proceed.

16 MR. VARGAS: The People and the defense have
17 come to an agreement which we ask the Court to accept,
18 which includes the defendant pleading guilty to the
19 crimes of grand larceny in the third degree, a class D
20 felony, a lesser included offense of count four on the
21 indictment, which is grand larceny in the second degree
22 and fraudulent practices in respect to stocks, bonds and
23 other securities, a class E felony, also known as a
24 Martin Act Scheme charge, which is count 21, in full
25 satisfaction of indictment 636N-20.

1 The People and the defendant have reached a
2 global resolution with the Attorney General's Office.
3 The defendant and the Attorney General's Investor
4 Protection Veto agreed the civil enforcement action
5 captioned "The People of the State of New York versus
6 Aaron D. Fischmann et al.," currently pending against
7 the defendant in New York State Supreme Court, New York
8 County, under index number 452343/2018, has been
9 resolved with the defendant consenting to the entry of
10 an order and judgment, including a five-year ban from
11 the securities industry in New York State.

12 If I may --

13 THE COURT: Sure.

14 MR. VARGAS: -- continue?

15 At the time of the defendant's sentencing in
16 the criminal case, according to the plea terms, the
17 New York Attorney General's Office and defendant will
18 make sentencing recommendation to the Court that the
19 defendant be sentenced to a conditional discharge for a
20 term of three years, including special conditions that
21 the defendant make restitution in the total amount of
22 two million dollars, and the defendant consents to being
23 enjoined from participating in any capacity in the
24 securities industry in New York State for the period of
25 three years, commencing on the date of defendant's

1 sentence.

2 Your Honor, if I may, the People would like to
3 make an application for the Court to consider sentencing
4 the defendant to a conditional discharge.

5 THE COURT: Why are you seeking to have this
6 defendant sentenced to a conditional discharge rather
7 than a probationary sentence or incarceration sentence?

8 MR. VARGAS: Your Honor, the People urge the
9 Court to sentence the defendant to a conditional
10 discharge because the People believe that consideration
11 of the defendant's lack of criminal history and our
12 review of the facts, case law and pending motions in
13 front of your Honor, which have called into issue the
14 availability of all of the counts in the indictment
15 available at trial, as well as the uncertainty of trial,
16 and, in addition, one million dollars in restitution is
17 being paid today by the defendant which will be
18 immediately available to the Attorney General's Office
19 to distribute pro rata to the complainants in both the
20 criminal and civil action.

21 This initial payment, the initial restitution
22 payment has been thoroughly vetted by the Attorney
23 General's Office by way of reviewing financial records
24 and conducting interviews of witnesses that defense
25 counsel has provided to our office.

1 Under all of those circumstances that the
2 People view this case in, we now urge the Court sentence
3 the defendant to a conditional discharge with the
4 special conditions previously stated.

5 Just to be clear, the restitution payment, the
6 funds for this initial restitution payment has been
7 vetted by our office and we found the monies -- the
8 funds are not from the crime that is alleged to have
9 been committed in this case.

10 THE COURT: You had said two million dollars
11 and one million dollars today. What about the other
12 million?

13 MR. VARGAS: Yes, your Honor. The defendant
14 will make restitution -- I'm sorry, the defendant will
15 consent to pay a restitution order for two million
16 dollars, payable as follows:

17 Defendant will make the initial restitution
18 payment in the amount of one million today, the day of
19 sentencing -- the defendant will make additional
20 restitution payment in the amount of one million dollars
21 within three years, commencing on the date the defendant
22 is sentenced under this indictment and the terms of the
23 conditional discharge that's being considered.

24 Defendant's restitution payments will be paid
25 by either bank check or attorney escrow account check

1 made payable to Office of the New York State Attorney
2 General and delivered by hand or overnight delivery to
3 Assistant Attorney General David Vargas, the 14th floor,
4 28 Liberty Street, New York 10005.

5 THE COURT: Is there a signed restitution
6 agreement by the defendant to pay in accordance with
7 that schedule and under those terms?

8 MR. VARGAS: There is not a signed agreement,
9 but defense counsel and the Attorney General's Office
10 are in agreement with that restitution payment.

11 Mr. McNALLY: That is correct, your Honor.

12 MR. VARGAS: We would also like to add if the
13 defendant fails to make that restitution payment, the
14 conditional discharge sentence may be revoked and he
15 faces time of imprisonment. That same revocation and
16 possible term of imprisonment also applies to the other
17 special condition regarding the securities ban.

18 THE COURT: Is there any waivers to the right
19 to appeal?

20 MR. VARGAS: Yes, your Honor.

21 THE COURT: Have the People certified
22 discovery in this case?

23 MR. VARGAS: Yes, your Honor, People certified
24 discovery in December 2020 and filed a statement of
25 readiness.

1 THE COURT: Can counsel approach, please.
2 (Off-the-record discussion held at the bench.)
3 THE COURT: Does the defense acknowledge that
4 certification?
5 MR. McNALLY: We do, your Honor.
6 THE COURT: Do you contest it in any way?
7 MR. McNALLY: We do not, your Honor.
8 THE COURT: Anything else?
9 MR. VARGAS: Just for the record, the
10 two million dollars in restitution, the total amount
11 will be distributed by the Attorney General's Office
12 pro rata to eligible investors in both the criminal
13 indictment 63N-20 and civil complaint under index
14 452343/2018.
15 THE COURT: And does the defense join in that
16 application?
17 MR. McNALLY: We do, your Honor.
18 MR. HUEBNER: We do, your Honor.
19 (The defendant was duly sworn/affirmed by the
20 Court.)
21 THE COURT: Do you swear and affirm everything
22 you said so far is true?
23 THE DEFENDANT: I do.
24 THE COURT: What is your name and address?
25 THE DEFENDANT: Aaron Fischmann, 703 Carlisle

1 Street, Woodmere, New York 11598.

2 THE COURT: Does defense counsel withdraw all
3 motions pending or previously ruled upon in this
4 proceeding?

5 MR. McNALLY: We do, your Honor.

6 MR. HUEBNER: We do, your Honor.

7 THE COURT: Mr. Fischmann, I will be asking
8 you additional questions. If at any time you do not
9 understand my questions, let me know you don't
10 understand, okay.

11 THE DEFENDANT: Yes.

12 THE COURT: You can stop me and ask me or your
13 attorney questions during the course of my questioning
14 at any time.

15 Do you understand that?

16 THE DEFENDANT: I do.

17 THE COURT: Have you fully discussed the facts
18 of this case with your attorneys?

19 THE DEFENDANT: Yes.

20 THE COURT: Counsel, have those discussions in
21 fact taken place?

22 MR. McNALLY: Yes, they have, your Honor.

23 MR. HUEBNER: Yes, your Honor.

24 THE COURT: How old are you, sir?

25 THE DEFENDANT: I'm sorry.

1 THE COURT: How old are you?

2 THE DEFENDANT: I'm 60 years old.

3 THE COURT: What is the highest grade level
4 you have completed in school?

5 THE DEFENDANT: Fourth year college.

6 THE COURT: Do you read and write English?

7 THE DEFENDANT: I do.

8 THE COURT: Are you a United States citizen?

9 THE DEFENDANT: I am.

10 THE COURT: Do you feel like you're in good
11 physical and mental health as you sit here today?

12 THE DEFENDANT: Yes.

13 THE COURT: Have you had any alcohol or drugs
14 within the last 24 hours?

15 THE DEFENDANT: No.

16 THE COURT: Have you had enough time to speak
17 with your attorney before pleading guilty here today?

18 THE DEFENDANT: Yes, I have.

19 THE COURT: Are you satisfied with the manner
20 in which your attorney has represented you?

21 THE DEFENDANT: I am.

22 THE COURT: Now, do you understand that you
23 have the right to a trial by jury with the assistance of
24 your attorney and the district attorney would have to
25 prove your guilt beyond a reasonable doubt?

1 THE DEFENDANT: I do.

2 THE COURT: And that you have the right to
3 listen to the witnesses against you and to have your
4 attorney cross-examine those witnesses.

5 THE DEFENDANT: Yes.

6 THE COURT: And that you would not have to
7 take the stand and testify.

8 THE DEFENDANT: Yes.

9 THE COURT: And that you have no burden in
10 this case. It is the People's burden to prove your guilt
11 beyond a reasonable doubt to each and every element of
12 the charged crimes and you are presumed innocent
13 throughout the trial.

14 THE DEFENDANT: Yes.

15 THE COURT: And that you have the right to
16 bring in your own witnesses to testify on your behalf.

17 THE DEFENDANT: Yes.

18 THE COURT: And that by pleading guilty you
19 give up these rights.

20 THE DEFENDANT: Yes.

21 THE COURT: And that a plea of guilty is the
22 same as a conviction after trial.

23 THE DEFENDANT: Yes.

24 THE COURT: Has anyone made any threats or in
25 any way tried to force you to plead guilty?

1 THE DEFENDANT: No.

2 THE COURT: Now, a defendant ordinarily
3 retains the right to appeal even after pleading guilty.
4 But in this case, as a condition of the plea agreement,
5 you're being asked to waive your right to an appeal.

6 THE DEFENDANT: Yes.

7 THE COURT: An appeal is a proceeding before a
8 higher court, an appellate court. If a defendant can't
9 afford the costs of an appeal or of a lawyer, the State
10 will pay the costs on an appeal.

11 The defendant may normally through his or her
12 lawyer argue an error took place in the court which
13 requires a modification or reversal of conviction. A
14 reversal would require either new proceedings in this
15 court or a dismissal.

16 Do you understand that?

17 THE DEFENDANT: Yes.

18 THE COURT: By waiving your right to appeal
19 you don't give up your right to take an appeal by filing
20 a notice of appeal with this Court and the district
21 attorney within 30 days of sentence. But if you take an
22 appeal, you are by this waiver giving up the right to
23 have an appellate court consider most claims of error
24 and whether the sentence imposed, whatever it may be, is
25 excessive and should be modified. As a result, a

1 conviction by this plea and sentence will normally be
2 final.

3 Do you understand that?

4 THE DEFENDANT: I do.

5 THE COURT: Have you spoken with your attorney
6 about waiving your right to appeal?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you willing to do so in return
9 for the plea and sentence agreement?

10 THE DEFENDANT: Yes.

11 THE COURT: Do you waive your right to appeal
12 voluntarily and of your own free will and choice?

13 THE DEFENDANT: Yes.

14 THE COURT: And, defense counsel, do you have
15 or have you received adequate information through
16 discovery and otherwise to intelligently advise your
17 client in this matter?

18 MR. McNALLY: Yes, your Honor, we have.

19 MR. HUEBNER: Yes, your Honor, we have.

20 THE COURT: Sir, have you previously been
21 convicted of a felony?

22 THE DEFENDANT: No.

23 THE COURT: Do you understand you're pleading
24 guilty to a felony here today and if you're convicted of
25 a new felony under the New York State Penal Law at any

1 time within the next ten years, the court must impose a
2 mandatory term of imprisonment?

3 THE DEFENDANT: Yes.

4 THE COURT: Are you currently on probation or
5 parole?

6 THE DEFENDANT: No.

7 THE COURT: Under this indictment that's now
8 been consolidated with the SCI you're charged with the
9 following crimes: These are the original charges, not
10 the reduced charges that the Attorney General just
11 stated. The original charges.

12 One count of grand larceny in the first
13 degree, a B felony, which carries a maximum jail
14 sentence of 25 years;

15 Four counts of grand larceny in the second
16 degree, these are C felonies, maximum jail 15 years;

17 Four counts of grand larceny in the third
18 degree, these are D felonies, maximum jail sentence
19 seven years;

20 One count of money laundering in the second
21 degree, this is a C felony, maximum jail sentence 15
22 years;

23 Nine counts of violation of General Business
24 Law Section 3502-c(6). These are each A misdemeanors.

25 Off the record.

1 (Discussion held off the record.)

2 THE COURT: I misspoke, I'm sorry.

3 Nine counts of violation of General Business
4 Law 352-c(6). These are each E felonies that carry
5 maximum jail sentences of four years.

6 One count of scheme to defraud in the first
7 degree, E felonies, maximum jail four years;

8 And, finally, consolidated count, violation of
9 General Business Law 352-c(5), and that is an E felony
10 with a maximum jail sentence of four years.

11 Do you understand the original charges and the
12 jail that would normally be accompanying those original
13 charges?

14 THE DEFENDANT: I do.

15 THE COURT: The Attorney General has made a
16 plea offer wherein they are reducing those original
17 charges, they are dismissing all of the charges except
18 the one count of grand larceny in the third degree,
19 which is a D felony that carries maximum jail sentence
20 of seven years and one count of General Business Law
21 352-c(5), which is an E felony which is a maximum jail
22 sentence of four years.

23 Were you to accept that plea, the Attorney
24 General has asked me under these exceptional
25 circumstances to sentence you to a conditional discharge

1 with two million dollars in restitution paid in the
2 forms set forth and in accordance with the requirements
3 set forth by Mr. Vargas.

4 There would also be a five-year ban --

5 MR. HUEBNER: Three in the criminal case, your
6 Honor, and five in the civil case.

7 THE COURT: Okay. In this case there would be
8 a three-year ban, in the criminal case, from being
9 associated with any broker-dealer, investment adviser,
10 municipal securities dealer, municipal adviser, transfer
11 agent or nationally recognized statistical rating
12 organization in the sale of securities or commodities
13 within or from the State of New York in any capacity.

14 There would also be applicable surcharges and
15 a DNA fee.

16 Do you understand this commitment as to your
17 sentence?

18 THE DEFENDANT: I do.

19 THE COURT: On the basis of the statements
20 made by the Attorney General, including the statements
21 concerning proof issues and the amount of money being
22 paid in this case and the ban on the securities, the
23 Court will agree to the request that you be sentenced in
24 this fashion.

25 Other than this commitment, has anyone made

1 any different promises to you?

2 THE DEFENDANT: No, sir.

3 THE COURT: Do you also understand that if you
4 don't pay the restitution in the manner set forth by the
5 Assistant Attorney General Mr. Vargas within the three
6 year conditional discharge period, you will violate that
7 conditional discharge? If you are found to have
8 violated that conditional discharge, you will be
9 sentenced to seven years incarceration.

10 Do you understand that?

11 THE DEFENDANT: I do.

12 THE COURT: Do you also understand if you
13 violate the agreement and the part of the conditional
14 discharge dealing with your securities ban I just went
15 through with you, you will be sentenced to seven years,
16 if you are found to have violated that?

17 Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Is all that acceptable to you?

20 THE DEFENDANT: It is.

21 THE COURT: Other than these promises, has
22 anyone made any different promises to you?

23 THE DEFENDANT: No, your Honor.

24 MR. HUEBNER: Your Honor, may we approach?

25 MR. KOEVARY: Your Honor, may we approach for

1 a moment?

2 THE COURT: Sure.

3 (Off-the-record discussion held at the bench.)

4 THE COURT: Sir, I indicated if you violate
5 the conditional discharge you would be sentenced to
6 seven years. You would be sentenced to up to seven
7 years.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: I suggest really strongly you
11 don't violate the conditional discharge.

12 Do you understand that?

13 THE DEFENDANT: I do.

14 THE COURT: Which count is the grand larceny
15 count?

16 MR. VARGAS: It is count four.

17 THE COURT: Between on or about May 3rd, 2013
18 and September 26, 2016, in the County of Nassau, State
19 of New York and elsewhere, did you wrongfully take and
20 steal property from Thomas Eisenberg?

21 THE DEFENDANT: I did.

22 THE COURT: Did you intend to deprive Thomas
23 Eisenberg of that property?

24 THE DEFENDANT: I did.

25 THE COURT: Did that property exceed \$3,000?

1 THE DEFENDANT: Yes.

2 THE COURT: And was that stolen property money
3 invested into Cardis?

4 THE DEFENDANT: Yes.

5 THE COURT: As to what's now count 21, between
6 on or about January 24, 2013 and December 27, 2017, in
7 the County of Nassau, State of New York and elsewhere,
8 did you intentionally engage in a scheme constituting a
9 systematic ongoing course of conduct with the intent to
10 obtain property from ten or more persons by false
11 pretenses, representations or promises?

12 THE DEFENDANT: Yes.

13 THE COURT: Did those ten or more persons
14 include Leslie Edelman, Kimber Manufacturing,
15 A. Edelman Trust, H. Edelman Trust, S. Edelman Trust,
16 Charles Alpert, Cam Co., David Kippen, Barry McDonald,
17 Thomas Eisenberg, Benjamin Brafman, Alpine Vista Fund,
18 Laurence Sorkin, Matthew Ackerman/Knott Direct Inc.,
19 John Wagner, Lawrence Rein, Elie Rieder/V-1 LLC, Daniel
20 Feinberg, and Brian LeBlanc, among others?

21 THE DEFENDANT: Yes.

22 THE COURT: In engaging in such scheme did you
23 use false pretenses, representations or promises?

24 THE DEFENDANT: Yes.

25 THE COURT: Using such means did you obtain

1 property from one or more persons while engaged in
2 inducing or promoting the issuance, distribution,
3 exchange, sale, negotiation or purchase of any
4 securities or commodities?

5 THE DEFENDANT: Yes.

6 THE COURT: Was Thomas Eisenberg one such
7 person from whom you obtained property?

8 THE DEFENDANT: Yes.

9 THE COURT: Now, everything you told me today
10 has been under oath. Is everything you said the truth?

11 THE DEFENDANT: Yes.

12 THE COURT: The Court is satisfied that the
13 defendant understands the nature of the charges, the
14 nature of the plea and the possible consequences of the
15 plea, that he's discussed his legal rights with his
16 attorney and that he understands he's waiving his
17 constitutional rights.

18 The Court is further satisfied the defendant
19 has acknowledged his guilt and the Court believes that
20 it is in the interest of justice to accept this plea
21 from this defendant.

22 THE CLERK: Aaron Fischmann, do you now wish
23 to withdraw your previously entered plea of not guilty
24 and enter a plea of guilty to grand larceny in the third
25 degree and now added count 21, fraudulent practices in

1 respect to stocks, bonds and other securities, in full
2 satisfaction of indictment 70327-20?

3 THE DEFENDANT: Yes.

4 THE CLERK: How do you plead?

5 THE DEFENDANT: Guilty.

6 THE CLERK: Guilty plea is entered.

7 THE COURT: Are the People asking the Court to
8 order a presentence report?

9 MR. VARGAS: No, your Honor. The People are
10 requesting that the presentence report be waived.

11 THE COURT: Defense, are you requesting I
12 order a presentence report?

13 MR. McNALLY: We are not, your Honor.

14 MR. HUEBNER: No, your Honor.

15 THE COURT: In as much as both sides have
16 waived the presentence report, do the People wish to be
17 heard before I impose sentence?

18 MR. VARGAS: No, your Honor. Just want to
19 bring to the Court's attention the waiver of appeal.

20 THE COURT: He waived his appeal on the
21 record. If you want to execute a document, you can do
22 that as well.

23 MR. VARGAS: Handing to counsel.

24 THE COURT: While counsel is looking at that,
25 just so that the record is clear, I advised counsel off

1 the record of the fact that Mr. Gordon called chambers.
2 I didn't speak to him, he spoke to my chambers, and I
3 did not receive any correspondence to show counsel or
4 any statement to show counsel. I just told them in
5 court.

6 Acknowledged?

7 MR. VARGAS: Yes, acknowledged.

8 MR. McNALLY: That's the defendant's
9 understanding, your Honor.

10 MR. HUEBNER: Thank you.

11 THE COURT: Do the People wish to be heard any
12 further?

13 MR. VARGAS: Just to place on the record that
14 I have received the two-page waiver of appeal and it
15 appears that it has been executed by Mr. Fischmann and
16 his attorneys Mr. McNally and Mr. Huebner.

17 I'm not sure if your Honor will go over this
18 in regards to the restitution order, but just that the
19 defendant will agree to waive restitution hearing since
20 we have an agreement in regards to the restitution
21 payment.

22 THE COURT: Sir, do you waive any restitution
23 hearing?

24 THE DEFENDANT: Yes.

25 THE COURT: And agree to pay this restitution

1 in the manner you've set forth?

2 THE DEFENDANT: I do.

3 MR. HUEBNER: Your Honor, I would like to
4 place on the record I'm now handing attorney escrow --

5 THE COURT: I haven't sentenced him yet in the
6 first instance.

7 MR. HUEBNER: Sorry. Thank you.

8 THE COURT: Does defense counsel wish to be
9 heard?

10 MR. McNALLY: No, your Honor.

11 THE COURT: Would you like to be heard,
12 Mr. Huebner, before I ask the client if he wants to be
13 heard?

14 MR. HUEBNER: No, your Honor.

15 THE COURT: Sir, do you wish to be heard
16 before I impose sentence on you?

17 THE DEFENDANT: No.

18 THE COURT: Sentence is as follows:

19 On count one, three-year conditional discharge
20 with two million dollars in restitution. One million
21 dollars to be paid today to the Attorney General's
22 Office, one million dollars to be paid over the course
23 of the conditional discharge in the manner set forth by
24 Mr. Vargas.

25 There is also a three-year ban. The defendant

1 during the terms of the conditional discharge is
2 enjoined from acting as or being associated with any
3 broker-dealer, investment adviser, municipal securities
4 dealer, municipal adviser, transfer agent or nationally
5 recognized statistical rating organization in the sale
6 of securities or commodities within or from the State of
7 New York in any capacity for a period of three years
8 from today. That's on count four.

9 There's also a \$300 surcharge, \$25 CVA, \$50
10 DNA fee. Defendant has until February 14, 2023 to make
11 those surcharge payments.

12 On count 21 there is a three-year conditional
13 discharge. Also, as part of that conditional discharge,
14 the same restitution paid in the same manner and the
15 same surcharge payment.

16 Failure to pay the restitution in that manner,
17 failure to abide by the securities ban in that manner,
18 failure to obey any of the other conditions of the
19 conditional discharges will result in a violation of the
20 conditional discharge. And they run concurrent.
21 Conditional discharge and all the associated obligations
22 run concurrent.

23 Finally, Mr. Fischmann, do you own or possess
24 any guns, rifles or firearms?

25 THE DEFENDANT: No, I don't.

1 THE COURT: There is a \$50 DNA fee, there is a
2 court order for DNA which I've signed.

3 MR. HUEBNER: Your Honor --

4 THE COURT: Go ahead.

5 MR. HUEBNER: Your Honor, if I may, I will
6 present in open court from my attorney trust account the
7 funds that the Attorney General vetted that have been
8 placed in my attorney trust account and those funds are
9 in the sum of one million dollars. I am now handing
10 over to the People by check from my attorney escrow
11 account in the amount of one million dollars, payable to
12 the Office of the New York State Attorney General, check
13 dated today, December 15, 2022, for restitution, the
14 first branch of Mr. Fischmann's restitution on this
15 matter, your Honor, indictment 636N of 2020. I'm
16 handing it over to Mr. Vargas.

17 Mr. Vargas, can you please acknowledge this.

18 MR. VARGAS: Yes, your Honor.

19 Briefly, for the record I'm acknowledging
20 receipt of check number 2353, which is drawn from a
21 J.P. Morgan Chase Bank IOLA trust account for the amount
22 of one million dollars, dated December 15, 2022, from
23 Levi Huebner & Associates, made out to the Office of the
24 New York State Attorney General.

25 THE CLERK: Let the record reflect the

1 defendant has signed and received a copy of the sentence
2 order for conditional discharge.

3 MR. HUEBNER: Does your Honor need to make an
4 order regarding the release of the bail funds?

5 THE COURT: No. It is by operation of law.

6 MR. HUEBNER: I would like to thank your
7 Honor's staff and your Honor for going past the court
8 hours. It is after five o'clock, and I wanted to thank
9 everybody very much, sincerely.

10 MR. McNALLY: Your Honor, as I understand bail
11 is exonerated and Mr. Fischmann's passport will be
12 released.

13 THE COURT: It is by operation of law.

14 (Proceedings concluded.)

15 * * * * *

16 I hereby certify the foregoing transcript is a
17 true and accurate transcription from my stenographic
18 notes.

19 *Mickey Brymer*
20 Mickey Brymer, RPR
21 Senior Court Reporter
22
23
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